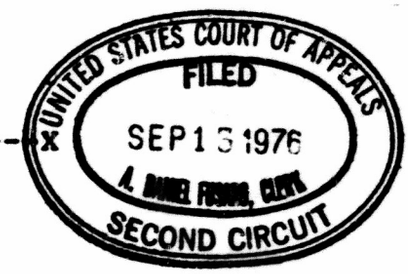
United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-7362

To be argued by
Patrick M. Wall



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BARBARA DAVIS, on behalf of herself and all other persons similarly situated,

Plaintiff-Appellant,

- against -

HONORABLE FRANK A. GULOTTA, as Presiding Justice of the Appellate Division of the New York State Supreme Court, Second Department; HONORABLE JOHN D'APRICE, as Judge in the Traffic Part of the City Court of Yonkers; PATROLMAN MATTHEW WALSH, as the police officer through whom the traffic infraction proceeding against plaintiff Barbara Davis was brought by the People of the State of New York; on behalf of themselves and all others similarly situated; Presiding Justices of the Appellate Divisions of New York State Supreme Courts, all other similarly situated Judges and Hearing Officers hearing traffic infraction charges in the State of New York, and all other similarly situated persons through whom traffic infraction proceedings are brought by the People of the State of New York,

Defendants-Appellees.

B P/S

Docket No.
76-7362

BRIEF FOR PLAINTIFF-APPELLANT

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Statutes:

AUTHORITIES CITED (Continued)

Miscellaneous:

AUTHORITIES CITED (Continued)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Plaintiff-Appellant,

- against -

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BRIEF FOR PLAINTIFF-APPELLANT

Preliminary Statement

This is an appeal from a judgment dated April 29, 1976, by which a three-judge panel in the United States District Court for the Southern District of New York (Gurfein, Griesa and Stewart, JJ.) dismissed a class action brought by Plaintiff-Appellant (hereafter "plaintiff") pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343(3) seeking declaratory and injunctive relief to secure what plaintiff asserted was her federal constitutional right to the assignment of counsel in certain state traffic infraction proceedings and to declare invalid New York Criminal Procedure Law §170.10(3)(c) and New York County Law §722-a to the extent that those sections violate that right.

Statement of Facts and Prior Proceedings

The facts underlying this controversy are not in dispute and may briefly be stated as follows:

On June 3, 1974, named plaintiff Barbara Davis was arrested in Yonkers, New York,[1] and charged with driving a motor vehicle without a license in violation of Vehicle and Traffic Law §509(1) and with driving while intoxicated in violation of Vehicle and Traffic Law §1192(2) and (3). The

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1. The arresting officer was one of the named Defendants-Appellees (hereafter "defendants") Patrolman Matthew Walsh of the Yonkers Police Department.

former charge, a traffic infraction punishable by a fine of fifty dollars or fifteen days in jail or both, was made returnable in the Traffic Part of Yonkers City Court. The latter charge, a misdemeanor, was made returnable in a criminal part of that same court. It is by and large the former charge — the traffic infraction — with which we are here concerned.

On July 31, 1974, at a hearing in Traffic Part before another named defendant, Hon. John D'Aprice, a Judge of the Yonkers City Court, plaintiff Barbara Davis, through her husband, claimed indigency and requested the assignment of counsel in the following colloquy:

> MR. DAVIS: I would ask that the court assign an attorney on the case.
> THE COURT: No. You are not entitled to an assigned counsel in a traffic infraction case.
> MR. DAVIS: Could I have a postponement so I can confer with an attorney?
> THE COURT: If you wish to. The court will not assign you counsel.
>
> * * *
>
> THE COURT: If you get counsel, you can ask him all the questions you want. If you can't afford one, I can't help you.

Plaintiff Barbara Davis, pro se, thereafter instituted this action, seeking the convening of a three-judge

court, the declaration that she had a federal constitutional right to the assignment of counsel in her traffic infraction proceeding, and an injunction against the enforcement of Criminal Procedure Law §170.10(3)(c) and County Law §722-a[2] for denying her that right.

On September 9, 1974, the Clerk of the Traffic Part of Yonkers City Court sent Mrs. Davis a letter informing her that counsel would be assigned to her if she were financially unable to retain counsel. A copy of this letter was sent to the Attorney General of the State of New York, attorney for the defendants. On October 1, 1974, the traffic infraction case was transferred to a criminal part of Yonkers City Court and made returnable with the misdemeanor charge on December 27, 1974. She, herself, was thus assured the benefit of assigned counsel.

Meanwhile, the defendants moved to dismiss the action as moot on the ground that Mrs. Davis had been informed of her right to assigned counsel pursuant to the Clerk's letter of September 9. Plaintiff thereupon filed an amended

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2. Criminal Procedure Law §170.10(3)(c) provides, in pertinent part, that the normal right of an indigent defendant to the assignment of counsel "does not apply where the accusatory instrument charges a traffic infraction or infractions only."

County Law §722-a provides for a similar exemption, in traffic infraction cases, from the normal assignment of counsel requirement.

complaint, expanding her claim to make it a class action on behalf of all indigent persons who are or will be defendants in traffic infraction proceedings in New York State.

By memorandum decision and order dated December 23, 1975, Hon. Charles E. Stewart, Jr., United States District Judge for the Southern District of New York, held that the action was not moot and denied the defendants' motion to dismiss. He ordered the convening of a three-judge court and deferred the question of the applicability of Younger v. Harris, 401 U.S. 37 (1971) to that court.

Thereafter, plaintiff moved, inter alia, for certification of the action as a class action of plaintiff and defendant sub-classes and for summary judgment and a permanent injunction. Defendants moved to dismiss the complaint on various grounds.

On April 29, 1976, the three-judge court, consisting of Circuit Judge Murray I. Gurfein and District Judges Thomas P. Griesa and Charles E. Stewart, Jr., after hearing oral argument, dismissed the complaint on the ground that it was barred by the Younger doctrine.

ARGUMENT

POINT ONE

AN INDIGENT DEFENDANT CHARGED IN A NEW YORK COURT WITH A TRAFFIC INFRACTION HAS A FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHT TO THE ASSIGNMENT OF COUNSEL

The principle which plaintiff seeks to establish by this proceeding is that every indigent defendant facing certain traffic infraction charges[3] in a New York court is entitled, under the Fifth, Sixth and Fourteenth Amendments, to the assignment of counsel.[4]

Before setting forth the legal theory upon which we base our claim, it is important that we detail the various consequences which flow from conviction of a traffic infraction.

The immediate and direct consequences of such a conviction depend upon whether or not it is the defendant's

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3. We say "certain" traffic infraction charges for the sole purpose of excluding from our request for relief those picayune charges such as overtime parking which can never result in an administrative hearing with a view toward suspending or revoking a driver's license. See infra at note 11.

4. Although there are in excess of a million traffic infraction cases in New York each year, the rule we request would have a far more limited application than might at first blush appear. To qualify as unable to retain counsel for a brief traffic infraction case would require a defendant to make a far stronger showing than needed in order for him to qualify as indigent with respect to a felony indictment or even a misdemeanor charge. And ownership of the vehicle involved would almost always preclude eligibility for assigned counsel.

first. Generally, the penalty involved is a fine of not more than fifty dollars or imprisonment for not more than fifteen days, or both. A second conviction within eighteen months raises the potential fine to one hundred dollars and the potential jail term to forty-five days. A third or subsequent conviction within that same eighteen months may result in a fine of not more than two hundred and fifty dollars or imprisonment for not more than ninety days, or both.[5] Even more strict penalties are provided for certain traffic infractions, again calling for fines or imprisonment or both. Speeding is an example. A first conviction calls for a fine of up to one hundred dollars, imprisonment for up to thirty days; a second calls for a fine of up to two hundred dollars, imprisonment for up to ninety days; a third or subsequent conviction calls for a fine of up to five hundred dollars, imprisonment for up to one hundred and eighty days.[6] Failure to pay a fine, of course, may result in imprisonment.

The collateral consequences of a conviction for a traffic infraction in New York are surprisingly serious. First, such a conviction may be used subsequently to prove an element of another criminal charge brought against the

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5. See Vehicle and Traffic Law §1800(b).
6. See Vehicle and Traffic Law §1801.

defendant.[7] Second, except as may be limited by case law,[8] a traffic infraction conviction may be used to impeach the credibility of a witness, even when he is a defendant in a criminal case.[9] Third, conviction of at least some traffic infractions is deemed to involve a certain social stigma and is said to reflect upon one's character and fitness, especially where professional employment is involved.[10]

Finally, and perhaps most important of all, a traffic infraction conviction may result in a suspension or revocation of the defendant's driver's license.[11] In Bell v. Burson, 402 U.S. 535, 539 (1971), the Supreme Court stated that:

> Once licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees.

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7. See Criminal Procedure Law §60.40(3). Thus, in a vehicular homicide case brought pursuant to Penal Law §§125.10 or 125.15, the prosecutor could introduce against the defendant the fact that he had been convicted of speeding in connection with the collision which resulted in death — a fact which might very well tip the scales against the defendant.

8. See, e.g., People v. Sandoval, 34 N.Y.2d 371 (1974).

9. See Criminal Procedure Law §60.40(1).

10. It is not, we think, without some significance that applications for admission to the Bar of the State of New York require the applicants to list thereon convictions for traffic infractions.

11. See Vehicle and Traffic Law §§510, 1807(1).

These rights-privileges are clearly affected by such traffic infraction convictions.[12]

It would be merely an idle parade of learning to trace the development of the right to counsel, retained or assigned, and its gradual application to the states. We therefore start with Argersinger v. Hamlin, 407 U.S. 25 (1972), the case at which our opponents desire that we and the law come to a screeching halt. There, the right to assigned counsel was guaranteed to all defendants who, upon conviction, would in fact be sent to jail; in other words, if an indigent defendant were not assigned counsel before trial or plea (or given the opportunity for assigned counsel), he could not be sentenced to imprisonment after conviction.

It is true, of course, that the Supreme Court in Argersinger required the appointment of counsel only in cases where imprisonment was actually imposed. But nothing in the case precludes a further expansion of the right to assigned counsel. Indeed, Justices Powell and Rehnquist, concurring, quoted from Bell v. Burson, supra, suggested a due process

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12. The importance of such licenses is underscored by the fact that when accused misdemeanants were not entitled to jury trials in New York City, they could nevertheless have their cases transferred to a higher trial court (where a jury trial was provided) upon a showing that a conviction might affect such property rights as the continued existence of a driver's license. See: Former New York City Criminal Court Act §32(b); People v. Marinelli, 37 N.Y.S.2d 321 (Sup. Ct. 1942).

rather than a right-to-counsel approach, and stated (407 U.S. at 48), that:

> Serious consequences also may result from convictions not punishable by imprisonment. Stigma may attach to a drunken-driving conviction or a hit-and-run escapade. Losing one's driver's license is more serious for some individuals than a brief stay in jail. . . . When the deprivation of property rights and interests is of sufficient consequence, denying the assistance of counsel to indigents who are incapable of defending themselves is a denial of due process.

Thus, the right we assert involves not only the assistance of counsel, but due process as well.

There is no reason to believe — and surely none was suggested below — that indigent defendants facing traffic infraction charges are any better able to defend themselves against those charges than they are to defend themselves against other mere "violations" defined by the Penal Law,[13] as to which the right to assigned counsel applies. There are a number of such violations; they are

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13. A "violation," like the average first-time traffic infraction, carries a maximum punishment of fifteen days. See Penal Law §70.15(4).

listed below.[14] A defendant charged with any one of them is entitled under Criminal Procedure Law §170.10(3)(c) to the assignment of counsel even though, facing the same potential penalty (or an even greater one) for a traffic infraction, he is not. Moreover, that same right is granted to a defendant charged with any one of a number of violations defined outside the Penal Law, even though some of them involve no jail penalty at all.[15] We submit that such an unreasonable disparity in treatment, with respect to such an important right as the right to counsel, violates a defendant's right to equal protection of the law under the

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14. Penal Law §100.00 — criminal solicitation in the third degree (requesting someone to commit a misdemeanor); Penal Law §140.05 — trespass; Penal Law §145.30 — unlawfully posting advertisements; Penal Law §215.58 — failing to respond to an appearance ticket; Penal Law §240.20 — disorderly conduct; Penal Law §240.25 — harassment; Penal Law §230.05 — patronizing a prostitute; Penal Law §240.35 — loitering; Penal Law §240.40 — appearance in public under the influence of narcotics or a drug other than alcohol; Penal Law §245.01 — exposure of a female; Penal Law §245.02 — promoting the exposure of a female; Penal Law §245.05 — offensive exhibition (e.g., dance or bicycle endurance contests, persons voluntarily being held up to ridicule, knife-throwing exhibitions with persons as ostensible targets).

15. See, e.g.,: Criminal Procedure Law §55.10(3), which defines as a "violation" any offense defined outside the Penal Law where the only sentence provided therein is a fine. And indigent persons charged with violations are, by virtue of Criminal Procedure Law §170.10(3)(c), entitled to the assignment of counsel.

Fourteenth Amendment.[16]

POINT TWO

THE YOUNGER v. HARRIS DOCTRINE DOES NOT PRECLUDE THE GRANTING OF RELIEF

I Introduction

In Younger v. Harris, 401 U.S. 37, 41 (1971), the Supreme Court reiterated what it called a "national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances." The companion case of Samuels v. Mackell, 401 U.S. 66, 72 (1971) held that the Younger doctrine applied with equal force to actions for declaratory relief when the issuance of a declaratory judgment would have "virtually the same practical impact as a formal injunction would." See also Perez v. Ledesma, 401 U.S. 82 (1971).

It was upon the Younger doctrine that the defendants successfully relied in the court below. For a number of reasons, that doctrine is inapplicable to this case.

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16. We note also that the right to assigned counsel has been guaranteed by federal courts in cases where jail is not necessarily in store for a defendant. See, e.g.: In re DiBella, 518 F.2d 955, 959 (2d Cir. 1975) (civil contempt); Cleaver v. Wilcox, 499 F.2d 940 (9th Cir. 1974) (child neglect proceeding); Abbit v. Bernier, 387 F. Supp. 57, 62 n.12 (D. Conn. 1974) (civil action to levy execution on bodies of judgment debtors). This case is even stronger.

II The Three Plaintiff Sub-Classes

The Supreme Court has made it clear that, in determining the applicability of the Younger doctrine, plaintiffs in different circumstances must be considered separately. See, e.g., Doran v. Salem Inn, Inc., 422 U.S. 922 (1975). It is for that reason — i.e., to facilitate analysis of the applicability of the Younger doctrine — that we set forth what we believe to be three separate sub-classes of plaintiffs.[17]

Class 1 includes all those indigent persons against whom traffic infraction charges were pending in New York as of December 23, 1975 — the date upon which Judge Stewart denied the defendants' motion to dismiss and ordered the convening of a three-judge court. That action by Judge Stewart was the first proceeding of substance in the federal court on this issue.[18]

Class 2 includes all those indigent persons against whom traffic infraction charges in New York have been instituted since December 23, 1975 and will be so instituted until the final granting of the remedial order or judgment sought by this action.

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17. The same sub-classification was presented to the court below.

18. Class 1 does not include named plaintiff Barbara Davis, who seeks no injunctive or declaratory relief by this action since she has already been assigned counsel.

Class 3 includes all those indigent persons against whom traffic infraction charges will be instituted in New York after the issuance of the remedial order or judgment sought by this action.

III Argument

For varying reasons, the Younger doctrine is applicable to none of the three plaintiff sub-classes.

A. All Plaintiffs

Before discussing the significance of the various plaintiff sub-classes with respect to the application of the Younger doctrine, we set forth here an argument applicable to all plaintiffs — that the vices sought to be cured by Younger are not present in the type of action now before this Court.

In Younger, a state criminal proceeding was sought to be enjoined on the ground that the statute under which that proceeding had been brought was unconstitutional. No such attack is made here. This action seeks only a declaration by this Court that those provisions of state law which prohibit the assignment of counsel in traffic infraction cases are unconstitutional and a prohibition against the further enforcement of those provisions. Were this Court to grant such relief,

the Vehicle and Traffic Law would still be enforced and the necessary enforcement of its substantive provisions would in no way be hindered.

Even after Younger, federal courts have entertained suits seeking to affect the manner in which state criminal proceedings were conducted, so long as no direct interference with such proceedings was involved. Thus, in Gerstein v. Pugh, 420 U.S. 103 (1975), the lengthy detention of state prisoners, prior to trial, without a "probable cause" hearing was held unconstitutional and enjoinable by the Supreme Court which, at 108 n.9, stated that:

> The District Court correctly held that respondents' claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions, Younger v. Harris. . . . The injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution. The order to hold preliminary hearings could not prejudice the conduct of the trial on the merits.

The similarity between that case and this is striking. Here, the absence of assigned counsel may not be raised as a defense to the traffic infractions charged. Here, too, an order that indigent defendants be assigned trial counsel "could not

prejudice the conduct of the trial on ther merits." Indeed, the presence of counsel has as its purpose the facilitation of the fact-finding process and the elucidation of relevant legal principles.

Another case in point is Conover v. Montemuro, 477 F.2d 1073 (3d Cir. 1972), a case which was cited with approval in Gerstein, supra. There, the Third Circuit held that the Younger doctrine did not bar the plaintiffs' attack upon the intake procedures of the Family Court in Philadelphia — procedures by which juvenile arrestees were subjected to a standardless "intake interview" and denied a preliminary hearing. In a concurring opinion at 1091, Judge Adams elaborated upon the Younger issue in these words:

> [P]laintiffs are here attempting to secure only a federal court judgment that holding juveniles without a preliminary hearing or an equivalent proceeding to ascertain probable cause is unconstitutional. Under these circumstances, a federal court's declaration of unconstitutionality or an injunction requiring the officials to institute a preliminary hearing procedure would in no way adversely affect the state's legitimate interest in conducting its delinquency hearings without direct interference. No delinquency hearings would be enjoined. Indeed, the sole effect of giving plaintiffs the relief they seek would be a requirement that, in the future, preliminary hearings or an equivalent proceeding to determine probable cause be held.

The same principle is applicable here. See also Gilliard v. Carson, 348 F. Supp. 757, 762 (M.D. Fla. 1972) (plaintiffs did not ask that any conduct "be made unpunishable").

B. Class 3 Plaintiffs

Class 3 plaintiffs are those indigents against whom traffic infraction charges will not be instituted until after issuance of the remedial judgment or order sought by this action. As noted above, Younger precludes only a federal court's interference with a pending state court action. Younger, supra at 41. See also: Steffel v. Thompson, 415 U.S. 452, 462 (1974) (the "relevant principles of equity, comity and federalism" which underlie the Younger doctrine "have little force in the absence of a pending state proceeding"); Doran v. Salem Inn, Inc., supra; Hicks v. Miranda, 422 U.S. 332 (1975).

C. Class 2 Plaintiffs

Class 2 plaintiffs are those indigent persons against whom traffic infraction charges are presently pending in New York courts, but whose cases were commenced only after Judge Stewart's December 23, 1975 decision — the first proceeding of substance in this action. Since those cases are presently

pending, it might ordinarily be thought that one of the facets of the Younger doctrine was present. However, the actual test is whether the state action was pending at the time that proceedings of substance first occurred in federal court. See, e.g.: Younger v. Harris, supra; Doran v. Salem Inn, Inc., supra; Hicks v. Miranda, supra; Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). Since the Class 2 actions were not so pending, the Younger doctrine is inapplicable to them as well.

D. Class 1 Plaintiffs

Class 1 plaintiffs are those indigent persons against whom traffic infraction proceedings were already pending at the time of Judge Stewart's December 23, 1975 decision. Thus, the Younger doctrine might normally apply, unless "special circumstances" here exist. They do.

The special circumstances involved here include the fact that this case clearly falls outside the rationale of the rule. The Younger doctrine is "founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights." Kugler v. Helfant, 421 U.S. 117, 124 (1975). For a number of reasons, no such "sufficient opportunity" is presented here and the doctrine is thus inapplicable.

First, an uncounselled defendant, indigent to boot, is hardly a likely vehicle by which the federal constitutional claim of a right to counsel may effectively be advanced. Numerous federal rights may surely be effectively advanced every day in state courts and are, in fact, so advanced. But he who advances them is a lawyer, retained or assigned, not an uncounselled defendant unversed as much in law as in the art of advocacy and probably lacking knowledge that the federal rights issue even exists. As Mr. Justice Brandeis once said: "A judge rarely performs his functions adequately unless the case before him is adequately presented." Brandeis, Living Law, 10 Ill. L. Rev. 461, 470 (1916). In the absence of trial counsel, the right to the appointment of such counsel can hardly be expected to be raised, argued and, if denied, preserved for appellate review.[19]

And what, one may ask, of the efficacy of appellate

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19. Indeed, there is good reason to believe that should an indigent defendant be aware enough to raise the issue and, when denied assignment of counsel, be stubborn enough to do something about it — e.g., by complaining in federal court — those who control that portion of the state court system then under attack will take such steps as may be necessary to calm the troubled waters. Here, for example, named plaintiff Barbara Davis was denied her request for assigned counsel. Only after she brought this suit was counsel offered to her, and fast upon the heels of that piece of charity came defendants' motion to dismiss her complaint as moot. Judge Stewart denied that motion, finding, inter alia, that defendants assigned her counsel "in order to avoid litigating the issues raised by this action."

review of any conviction of an uncounselled[20] indigent defendant in a New York traffic infraction case? assuming an uncounselled defendant astute enough merely to raise the issue, he must be astute enough to argue it on appeal in the event of conviction and — a contradiction in terms — wealthy enough to afford the necessary transcript of the trial even though he could not afford trial counsel.[21] For New York courts hold that a convicted traffic infraction defendant not facing incarceration has no right to a free copy of his trial transcript for purposes of appeal or to the assignment of counsel. See, e.g.: People v. Farinaro, 36 N.Y.2d 283 (1975); People v. Peskin, New York Law Journal, Nov. 14, 1975, p. 11 (App. T., 2d Dep't); People v. Bartkus, New York Law Journal, Oct. 17, 1975, p. 9

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20. We assume here that any New York court which fails to offer assigned counsel to a traffic infraction defendant will heed Argersinger and will not, upon his conviction, send the defendant to jail. That assumption, however, may not be correct. See, e.g., Gilliard v. Carson, supra, where, despite Younger, a federal court enjoined a state judge who, despite Argersinger, was sending uncounselled defendants to jail upon conviction.

Should a judge erroneously sentence to jail an uncounselled defendant, that defendant could obtain a stay of the judgment pending appeal and an admission to bail pursuant to Criminal Procedure Law §460.50. He could, that is, if he knew of the provision. The average defendant, unaided by counsel, is most unlikely to know anything at all on the i-sue.

21. It is by no means an exaggeration to say that it costs almost as much per hour to pay today's average court reporter for a trial transcript as it does to pay trial counsel.

(App. T., 2d Dep't).[22] Thus, unless he suddenly comes upon the money needed to buy a transcript of his trial,[23] there will be no appeal and thus no effective opportunity for the vindication of his rights. And even if he is able to afford a transcript, he must argue his own case unless he is also able to afford appellate counsel.[24]

Finally, let us assume the most unlikely set of facts. Assume that the convicted uncounselled traffic infraction defendant has, despite his circumstances: (1) preserved his federal constitutional claim at trial; (2) found the money to buy a trial transcript for his appeal; (3) found the patience and expertise to docket and perfect the appeal; and (4) either (a) found additional money to pay for appellate counsel; or

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22. Contrast this rule in criminal cases with the right of an indigent appellant in a civil case to a free copy of the trial transcript. See Civil Practice Law and Rules §1102(b). See also Mayer v. Chicago, 404 U.S. 189 (1971), in which the Supreme Court held unconstitutional the denial of a free transcript to an indigent appealing a non-felony conviction, where the transcript would have been provided had the conviction been for a felony.

23. Appeals in New York, as might be expected, must usually be based either upon the original record or upon an appendix. Exceptions to the rule are so limited as to be beyond the ken of virtually all defendants and most lawyers.

24. Even assuming a limited ability to argue his cause, the defendant may very well be tempted to abandon his appeal in frustration over the necessity to comply with a court's rules for the docketing and perfection of an appeal — rules which, as this Court surely knows, even many lawyers do not know.

(b) argued his own appeal. How will he fare in New York? Under present law he must surely lose. New York courts are consistent in their holdings that traffic infraction defendants, whether at trial or on appeal, are not entitled to the assignment of counsel. See, e.g.: People v. Letterio, 16 N.Y.2d 307 (1965); People v. Farinaro, supra. The latter case was decided one year ago and took specific notice of Argersinger.

We submit that the "special circumstances" specifically mentioned in Younger are clearly present here and prevent the application of the non-intervention aspect of the Younger case.

Conclusion

For the foregoing reasons, the judgment appealed from should be reversed and this Court should order that plaintiffs be granted the relief requested.

Respectfully submitted,

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